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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FABRICE DELLA MEA

Appeal 2007-2856
Application 09/749,656
Technology Center 2600

Decided: March 11, 2008

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI,
and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 9-14, 19, and 22. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing on this appeal was conducted on February 13, 2008.

STATEMENT OF CASE

Appellant discloses mobile telephone systems that allow for optimization of the quality of service. (Specification 1: 3-8). The system allows for the establishment of a tandem free operation mode that selects a

common coding mode, where the selection takes into account the traffic load in at least one cell of the system. (Specification 4: 25-31).

Claims 1-22 are pending in the application. Claims 1, 9-14, 19, and 22 stand rejected over prior art and claims 2-8, 15-18, 20, and 21 were indicated as being allowed or containing allowable subject matter.

Independent claim 1, which is deemed to be representative, reads as follows:

1. A method of establishing the tandem free operation mode for a mobile station to mobile station and cell to cell call in a cellular mobile telephone system, the method comprising selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell.

The Examiner relies on the following prior art references to show unpatentability:

Watanabe	US 5,991,642	Nov. 23, 1999
Oestreich	US 6,349,197 B1	Feb. 19, 2002
Mayer	US 2003/0195011 A1	Oct. 16, 2003

The Examiner rejected, under 35 U.S.C. § 103(a), claims 1, 9, 13, 14, 19, and 22 as unpatentable over Watanabe and Oestreich, and

claims 10-12 as unpatentable over Watanabe, Oestreich, and Mayer.

While Appellant has indicated the appeal of the rejections of claims 1, 9-14, 19, and 22, Appellant has argued the patentability of elements of independent claim 1, has argued that “[t]o the extent claim 22 recites similar elements [to claim 1], claim 22 should be deemed allowable,” (Br. 11), and has not argued the patentability of any of the dependent claims apart from

their dependence on the independent claims. Therefore, we take claim 1 to be representative of the argued claims. *See*, 37 C.F.R. § 41.37(c)(1)(vii).

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief, the Reply Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We affirm.

ISSUE

1) Has Appellant shown that the Examiner erred in finding claim 1 obvious over Watanabe and Oestreich?

FINDINGS OF FACT

1. The application details that a tandem free operation (TFO) mode can be established by selecting a common coding mode for the mobile stations. The selection of the common coding mode takes into account the traffic load in at least one cell. (Specification 9: 13 – 11: 26; Fig. 1).

2. The Specification details that the selection of a common coding mode occurs in the acknowledged prior art. The Specification does not define the term “coding mode,” used in the claims, but does detail that HR, FR and EFR are “merely examples of coding modes which respectively consume less and more resources.” (Specification 3: 1 – 4: 9; 10: -24-27; Fig. 1).

3. Watanabe discloses a mobile communication system which has mobile stations, base stations, connected to the mobile stations by radio channels, and switches which switch and connect transmission routes between two of the mobile stations, which are respectively connected to two base stations. The system also includes control stations which set and control the connection conditions of base stations, where some of the mobile stations have equipment which can adaptively handle different types of speech coding schemes. Based on communications between mobile stations, the same speech coding scheme can be selected. (Col. 4, ll. 35-47; col. 8, ll. 41-53; col. 9, l. 66 – col. 10, l. 49; Fig. 1, elements 11-13, 21-24, 31-34, 41, and 42).

4. Oestreich discloses a radio communication system that transmits speech information using different speech coding methods based on transmission possibilities. A common coding mode is selected based on the detection of interruptions in the transmission or bottlenecks in the allocation of radio resources. (Abstract; Col. 2, ll. 47-57; col. 4, ll. 36-44).

5. Mayer is directed to methods of transmitting Global System for Mobile communication (GSM) data. It discloses that coding modes consuming the most resources is a half-rate/full-rate mode. (Abstract; [0007]).

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellant to overcome the *prima facie* case with argument and/or evidence. *See Id.*

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The analysis need not seek out precise teachings directed to the specific subject matter of the claim but can take into account the inferences and the creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). The definiteness inquiry focuses on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the rest of the specification. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed.Cir.1986).

ANALYSIS

Appellant argues that Oestreich fails to teach or suggest the selection of a common coding mode. (Reply Br. 4). While the rejection of claim 1 indicates that Watanabe does not specifically teach the selection of a common coding mode for each mobile station, we find that both Watanabe, (Findings of Fact 3), and the acknowledged prior art, (Findings of Fact 2), disclose the selection of a common coding mode for mobile stations. Additionally, Appellant has acknowledged that "Watanabe discloses the selection of a coding mode according to a coding mode which mobile

stations have in common.” (Br. 10). As such, the only element of claim 1 not taught or suggested by Watanabe is the last element: “the selection of a common coding mode takes account of the traffic load in at least one cell.”

Appellant argues that Watanabe fails to teach the selection of a common coding mode based on traffic load, and relies on coding modes that the mobile stations have in common and the order of priority of those coding modes. (Br. 10-11). Appellant acknowledges, however, that Oestreich discloses “a control means SE detecting interruptions in a TPO transmission or of bottlenecks and selecting a narrowband speech coding method.” (Reply Br. 5). Thus, Oestreich teaches that a coding mode may be selected based on detected traffic. (Findings of Fact 4). We find the latter element of claim 1 to read on such a functionality disclosed in Oestreich and thus find all of the elements of claim 1 to be taught or suggested by Watanabe and Oestreich. The remaining issue is whether the combination of those references in the rejection of claim 1 is proper.

Appellant argues that the selection of a common coding mode in Watanabe is solely based on the coding modes the mobile stations have in common and changing the selection process as provided in the rejection would “result in a substantial modification of the principal [sic] operation of Watanabe (MPEP 2143.01(VI)).” (Br. 10 and Reply Br. 7). We reject the notion that selecting a coding mode based on traffic load, as taught by Oestreich, would change the principle operation of Watanabe, as the principle operation of Watanabe, the selection of speech coding schemes for mobile stations, would still be effectuated, even if modified by Oestreich. As such, we find the rationale for the combination of Watanabe and Oestreich

provided in the rejection of claim 1, namely in order to provide the variable transmission conditions with respect to the speech coding/decoding method, to be sufficient and proper. Therefore, we find no error in the rejection of claim 1 as being obvious in view of Watanabe and Oestreich.

Additionally, we note that Appellant has not argued the patentability of any of the dependent claims apart from their dependence on the independent claims, and thus we affirm the rejection of claims 10-12 as unpatentable over Watanabe, Oestreich, and Mayer as well.

CONCLUSION OF LAW

We find that the Examiner did not err in rejecting claims 1, 9-14, 19, and 22 under 35 U.S.C. § 103(a) based on Watanabe, Oestreich, and Mayer.

DECISION

The rejections of claims 1, 9-14, 19, and 22 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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